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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 OAKLAND DIVISION

11 JUN LIANG and YUNQIU YUAN,)	No. C 07-2349 CW
12 Plaintiffs,)	DEFENDANTS' CROSS-OPPPOSITION;
13 v.)	AND DECLARATION OF MICHAEL A.
14 ALBERTO GONZALES, United States)	CANNON
15 Attorney General, U.S. Department of Justice;)	
16 MICHAEL CHERTOFF, Secretary of)	Date: October 11, 2007
the Department of Homeland Security;)	Time: 2:00 p.m.
17 EMILIO T. GONZALEZ, Director of United)	Courtroom: 2, 4th Floor
States Citizenship and Immigration Services;)	
18 GERARD HEINAUER, Director of Nebraska)	
Service Center, United States Citizenship and)	
Immigration Services;)	
19 ROBERT S. MUELLER III, Director of the)	
Federal Bureau of Investigation,)	
20 Defendants.)	

21 Pursuant to a revised stipulation, the parties cross-moved for summary judgment for summary
 22 judgment in this immigration mandamus action on September 7, 2007. Defendants hereby briefly
 23 oppose Plaintiffs' cross-motion and ask the Court to grant summary judgment in Defendants'
 24 favor.

25 Again, since March 1, 2003, the Department of Homeland Security, not the FBI, has been the
 26 agency responsible for implementing the Immigration and Nationality Act. *See* 6 U.S.C. §§
 27 271(b)(5), 557. Therefore all Defendants besides Michael Chertoff should be dismissed. *See*
 28 *Konchitsky v. Chertoff*, 2007 WL 2070325, at *7 (N.D.Cal.Jul. 13, 2007); *see also* Declaration of

1 Michael A. Cannon (Cannon Decl.) ¶ 40 (attached as Exhibit A).

2 In their motion for summary judgment, Plaintiffs primarily cite to cases in which this District
 3 has found jurisdiction over these mandamus actions in which aliens are seeking an order
 4 compelling Defendants to adjudicate their applications for adjustment of status more
 5 expeditiously. Plaintiffs, however, have not addressed Defendants' argument that the agency's
 6 delay is reasonable because there is no firm deadline and Plaintiffs' name checks are pending with
 7 the Federal Bureau of Investigation and Defendants have shown that they are doing everything to
 8 quicken the process. *Brower v. Evans*, 257 F.3d 1058, 1068 (9th Cir. 2001) (applying *Telecomm.*
 9 *Research and Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) ("TRAC")); Cannon Decl. ¶¶
 10 31-40.

11 Plaintiffs do argue that while the Immigration and Nationality Act contains no timetable for
 12 adjudication of applications for adjustment of status, Congress sets a normative expectation and
 13 standard in "The Immigration Services and Infrastructure Improvements Act of 2000" of a
 14 reasonable processing time for an immigrant benefit application as no more than 180 days after
 15 initial application. *See* 8 USC § 1571. Firstly, this provision was passed prior to 9/11. Secondly,
 16 this provision is entitled to little weight as it is precatory and does not give Plaintiffs a right to
 17 adjudication of their applications in a particular time frame. *Cf. Chong Yia Yang v. Cal. Dep't*
 18 *Social Svcs.*, 183 F.3d 953 (9th Cir. 1999).

19 Again, a review of the six *TRAC* factors laid out in Defendants' motion for summary judgment
 20 show that Defendants' have not unreasonably delayed actions pertaining to Plaintiffs' adjustment
 21 of status applications. Additionally, Plaintiffs have failed to establish that the extraordinary
 22 remedy of mandamus is appropriate. For the foregoing reasons, Defendants respectfully move
 23 Court for summary judgment in their favor.

24 Dated: September 20, 2007

Respectfully submitted,

25 SCOTT N. SCHOOLS
 26 United States Attorney

27 /s/
 28 ILA C. DEISS
 Assistant United States Attorney
 Attorneys for Defendants